

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PETER J. BATTAGLIA, Jr., a/k/a PETER
J. BATTAGLIA and PETER BATTAGLIA,
BATTAGLIA DEMOLITION, INC.,

Plaintiffs,

vs.

**AMENDED
COMPLAINT**

24-cv-00052-LJV

OHIO SECURITY INSURANCE COMPANY
LIBERTY MUTUAL INSURANCE

Defendants.

Plaintiffs, by their attorneys, LoTempio P.C. Law Group, as and for their Amended Complaint against Defendants herein, alleges as follows, upon information and belief:

1. Plaintiff, Peter J. Battaglia, Jr. a/k/a Peter J. Battaglia and Peter Battaglia, (Battaglia) was and is a citizen of the United States of America and a resident of the State of New York, County of Erie, residing at **82 Forestglen Circle, Williamsville, New York 14221**.
2. Plaintiff, Battaglia Demolition Inc. (Battaglia Demolition) was and is a domestic business corporation, incorporated under the laws of the State of New York with its principal place of business located at 1037-1055 Seneca Street Buffalo, New York.
3. The Defendant, Ohio Security Insurance Company (OSIC), is incorporated under the laws of the State of New Hampshire, with its principal place of business is the State of Massachusetts.
4. The Defendant, Liberty Mutual Insurance (LMI), is incorporated under the laws of the State of Massachusetts, with its principal place of business is the State of Massachusetts.
5. The Court has jurisdiction under 28 U.S.C. § 1332.
6. This Court is the appropriate venue for this action as pursuant to 28 U.S.C. §

1402(b), given that this is the district in which the Plaintiff resides and Plaintiff's business is headquartered.

7. OSIC and LMI provided insurance coverage to Battaglia and Battaglia Demolition for the premises located at 1037-1055 Seneca St. Buffalo, New York ("Premises) in connection with the claim out of which this action arises.

8. On or about August 21, 2021, there was a sudden and unexpected loss at the Premises as a result of a fire.

9. This loss caused immediate and significant damage to the Premises, and resulted in the loss of a building, amongst other things.

AS AND FOR A FIRST CAUSE OF ACTION

BREACH OF CONTRACT

10. Plaintiffs repeat and realleges each and every allegation contained in paragraphs number 1-9 as if more fully set forth herein.

11. Upon information and belief, LMI acquired OSIC, and therefore upon information and belief these entities are sufficiently intertwined and united in interest.

12. OSIC and LMI issued a commercial insurance policy to Battaglia and Battaglia Demolition, Policy No. BKS (22) 58776181, for the period from April 20, 2021 to April 20, 2022 (the "Policy").

13. Battaglia and Battaglia Demolition paid all premiums due and owing in connection with the Policy and complied with all Policy obligations and conditions.

14. Battaglia and Battaglia Demolition have fully complied with all terms, conditions, duties, and obligations under the Policy.

15. The August 21, 2021 loss was a Covered Cause of Loss under the Policy.

16. Battaglia and Battaglia Demolition immediately notified OSIC and LMI of the loss and requested coverage for damage to the Premises (the "Claim").

17. Battaglia and Battaglia Demolition fully cooperated with OSIC's and LMI's investigation into the loss and claim.

18. OSIC and LMI have failed and refused to honor their obligation to provide coverage for the Claim, despite the fact that all claimed losses are covered by the Policy.

19. OSIC and LMI are obligated to provide full coverage for said loss and Claim but have refused to reimburse Plaintiffs for damages to the Premises.

20. OSIC and LMI have wrongfully failed to pay amounts owed to Battaglia and Battaglia Demolition under the policy.

21. The Policy constitutes a valid and existing contract of insurance requiring OSIC and LMI to properly compensate Plaintiffs for their losses.

22. OSIC and LMI have breached the contract herein by denying Plaintiffs' claim and failing to pay Plaintiffs for their losses.

23. OSIC and LMI have breached their obligation to provide coverage and full payment for all covered damages (minus any applicable deductible) under the Policy.

24. OSIC and LMI have breached their obligations under the Policy and has caused Plaintiffs to incur damages, which the Plaintiffs are entitled to.

25. Plaintiffs are entitled to actual damages as a result OSIC's and LMI's breach of contract.

AS AND FOR A SECOND CAUSE OF ACTION

BAD FAITH

26. Plaintiffs repeat and realleges each and every allegation contained in paragraphs

number 1-25 as if more fully set forth herein.

27. LMI sent a rescission letter to the Plaintiffs dated August 23, 2022.

28. In the rescission letter, LMI believed that there was a material misrepresentation on Plaintiffs' application for insurance. Namely that Plaintiffs indicated that the insured property was occupied.

29. LMI stated that their investigation revealed that the statement was not true and that had they known about this information that they would not have written the policy.

29. Plaintiffs wrote on the first page of the subject insurance application that "Battaglia Demolition is a BUILDING OWNER ONLY. Past operations are no longer in service."

30. Plaintiffs also wrote on the subject insurance application that "Battaglia Trucking which operates a dumpster service is the only tenant of bldg." Plaintiff does not indicate that Battaglia Trucking was actually performing business operations on the premises nor any indication as to the frequency upon which Battaglia Trucking is actually on the subject premises.

31. Upon information and belief, LMI's claimed material misrepresentation was neither material nor a misrepresentation.

32. Upon information and belief, LMI's rescission letter was sent in Bad Faith in an attempt to invalidate Plaintiffs' valid insurance contract, and Plaintiffs are entitled to damages therefrom.

33. OSIC and LMI sent a Denial Letter dated August 24, 2022.

34. OSIC and LMI again state that Plaintiffs made a material misrepresentation of the building's use and occupancy on their insurance application.

35. OSIC and LMI again state that the claimed material misrepresentation was what Plaintiffs had written on the first page of their insurance application; “Battaglia Demolition is a BUILDING OWNER ONLY. Past operations are no longer in service. Battaglia Trucking which operates a dumpster service is the only tenant of bldg.”

36. Upon information and belief, Plaintiffs disclosed the same information on their previous insurance application in 2018. Therefore, OSIC and LMI were aware since 2018 that Plaintiffs’ past operations were no longer in service.

37. OSIC and LMI state that there was a Court ordered injunction of “any further operation of Respondents’ solid waste management facility,” and had they known about the injunction that they would not have issued the policy.

38. Upon information and belief, OSIC and LMI’s claimed material misrepresentation was neither material nor a misrepresentation.

39. Plaintiff stated on the first page of his insurance application that “Past operations are no longer in service.”

40. Upon information and belief, OSIC and LMI knew that Battaglia Demolition was no longer operating on the insured premises, and still issued the subject policy.

41. Upon information and belief, the statement was not a misrepresentation.

42. Upon information and belief, the reason as to why Battaglia Demolition was no longer operating is not material to the issuance of the policy, as the Defendants had known Battaglia Demolition was no longer operating at the premises since 2018.

43. OSIC and LMI still issued the policy despite being aware that Battaglia Demolition’s past operations were no longer in service.

44. OSIC and LMI also state, as another denial basis, that what they claim was a

material misrepresentation on Plaintiffs insurance application violated the “FRAUD” provision of their policy.

45. Upon information and belief, the subject statement on Plaintiffs’ insurance application was factual and neither material nor a misrepresentation.

46. OSIC and LMI also claim, as another denial basis, that Plaintiffs were not cooperative in accordance with the “Duties In the Event of Loss or Damage” section of the Policy.

47. OSIC and LMI claim that Plaintiffs have failed to return a signed copy of the EUO and/or provide documents which were requested at the EUO.

48. Upon information and belief OSIC’s and LMI’s requests for outstanding materials can be remedied and does not prejudice the Defendants. Upon information and belief, the sought items do not amount to non-compliance.

49. Upon information and belief, Plaintiffs have substantially complied with all requests made by OSIC and LMI relative to the subject loss and claim.

50. OSIC and LMI also claim, as another denial basis, that the subject claim and loss invoked the “Vacancy” section of the Policy.

51. OSIC and LMI claim that the Vacancy section of the policy may preclude or reduce coverage by 15%.

52. Upon information and belief, Plaintiffs premises was not vacant as defined in the section of the policy, and this section should neither preclude nor reduce coverage.

53. Upon information and belief, OSIC’s and LMI’s denial letter was sent in Bad Faith in an attempt to invalidate Plaintiffs’ valid insurance contract, and Plaintiffs are entitled to damages therefrom.

54. Upon information and belief, OSIC and LMI were aware that their denials were sent in bad faith in an attempt to avoid their obligations under Plaintiffs insurance policy; Plaintiffs are entitled to damages as a result.

WHEREFORE, Plaintiffs respectfully demand judgment against the Defendants in the amount of Five Million Dollars (\$5,000,000.00) and requests such other and further relief as this Honorable Court may deem just and proper, including the costs and disbursements of this action.

DATED: Buffalo, New York
April 10, 2024

LOTEMPIO P.C. LAW GROUP

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